

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARK KAPITI,

Plaintiff,

-against-

RAYMOND W. KELLY, in his official capacity as  
Commissioner of the New York City Police  
Department, PROPERTY CLERK, New York City Police  
Department, and THE CITY OF NEW YORK,

Defendants.

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THE CITY OF NEW YORK,

Plaintiff,

-against-

AMERICAN HONDA FINANCE CORPORATION d/b/a  
Honda Financial Services,

Defendant.

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**Philip S. Frank**, an attorney duly admitted to practice in the Courts of New York, declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following statements are true:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for third-party plaintiff City of New York (the "City"). As such, I am familiar with the facts set forth below.

**DECLARATION OF  
PHILIP S. FRANK IN  
OPPOSITION TO  
HONDA'S MOTION TO  
DISMISS THE THIRD-  
PARTY COMPLAINT**

07 Civ. 3782 (RMB)(KNF)

2. This declaration is submitted in support of the City's opposition to third-party defendant American Honda Finance Corporation's ("American Honda") motion to dismiss the third-party complaint, pursuant to Rules 12(b)(1)(2) and (6) of the Federal Rules of Civil Procedure.

3. Annexed as Exhibit "A" is a copy of the City's Third-Party Complaint, dated March 19, 2008.

4. Annexed as Exhibit "B" is a copy of the Indemnity Agreement between the City of New York and American Honda, dated May 30, 2006.

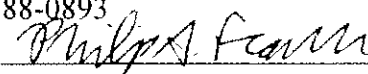
5. Annexed as Exhibit "C" is a copy of the Complaint, dated May 8, 2007, in the action entitled *Mark Kapiti against Raymond W. Kelly, in his official capacity as Commissioner of the New York City Police Department, the Property Clerk, New York City Police Department, and The City of New York*, 07 Civ. 3782 (RMB)(KNF).

6. Annexed as Exhibit "D" is a copy of the Affidavit of Service, dated March 19, 2008.

7. Annexed as Exhibit "E" is a copy of the Affidavit of Service, dated May 28, 2008.

8. Annexed as Exhibit "F" are excerpts from the deposition of Tara Schoolkraft taken on May 30, 2008.

Dated: New York, New York  
July 1, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for third party plaintiff the City of New  
York  
100 Church Street, Room 3-183  
New York, New York 10007  
(212) 788-0893  
By:   
Philip S. Frank (PF-3319)  
Assistant Corporation Counsel

Docket No. 07 Civ. 3782 (RMB)(KNF)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK KAPITI,

Plaintiff,

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RAYMOND W. KELLY, in his official capacity as  
Commissioner of the New York City Police  
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Police Department, and THE CITY of NEW  
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Defendants.

**DECLARATION OF PHILIP S. FRANK IN  
OPPOSITION TO HONDA'S MOTION TO  
DISMISS THE THIRD-PARTY COMPLAINT**

*MICHAEL A. CARDOZO*  
*Corporation Counsel of the City of New York*  
*Attorney for Defendants*  
*100 Church Street, Room 3-183*  
*New York, N.Y. 10007*

*Of Counsel: Philip S. Frank*  
*Tel: (212) 788-0893*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2008*

*.....Esq.*

*Attorney for .....*